

## **REMARKS**

1. In response to the Office Action mailed October 16, 2008, Applicant respectfully requests reconsideration. Claims 1-33 and 58 were presented for examination. In the outstanding Office Action, claims 1-33 and 58 were rejected. By the foregoing Amendments, claims 1-11, 13-14, 16, 19, 20, 23, 31, 32, and 33 have been amended. No claims have been added or cancelled. Upon entry of this paper, claims 1-33 and 58 will remain pending in this application. Of these thirty-four (34) claims, 3 claims (claims 1, 16 and 58) are independent.
2. Based upon the above Amendment and following Remarks, Applicant respectfully requests that all outstanding objections and rejections be reconsidered, and that they be withdrawn.

### ***Art of Record***

3. Applicant thanks the Examiner for returning the PTO/SB/08 form submitted by Applicant on March 4, 2005, which indicates the Examiner has considered the references cited therein.

### ***Claim Rejections under §112***

4. Claims 23-29, 32 and 33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant has amended claims 23, 32, and 33. Claims 24-29 depend from claim 23. Applicant according respectfully submits that claims 23-29, 32, and 33, as amended, satisfy 35 U.S.C. §112, and as such, request that the rejections be withdrawn.

### ***Claim Rejections under §102***

5. Claims 1-4, 11, 12, 16-19, 28 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,314,453 to Jeutter (hereinafter, “Jeutter”). Applicant respectfully requests that the Examiner reconsider and withdraw the rejections for at least the following reasons.

6. Claim 1, as amended, recites, in part, “[a] method comprising the steps of: measuring the strength of a magnetic field proximal to the external transceiver, wherein the magnetic field is generated at least in part by the external transceiver....” (*See*, Applicant’s claim 1, above.)

7. Jeutter is directed to a medical device that is implanted behind a tissue barrier within the body of a person. (*See*, Jeutter, col. 2, lns. 33-36.) Power is supplied to this implanted device by an external transmitter when the coils of an external transmitter antenna and coils of an internal receiver antenna are properly positioned with respect to each other. (*See*, Jeutter, col. 2, lns. 44-59.) Jeutter discloses that the internal receiver includes a magnet affixed to it. (*See*, Jeutter, Fig. 2, ferrous magnet 27; col. 3, lns. 15-20.) The external transmitter comprises a magnetically operated reed switch that can sense the presence of the internal magnet. (*See*, Jeutter, col. 4, lns. 63-67.) When the external reed switch senses the internal magnet, the external and internal units are in close proximity and the switch is closed thus causing power to be transmitted from the external transmitter to the internal receiver. (*See*, Jeutter, col. 4, ln. 63 – col. 5 ln. 5.) If, however, the internal and external units are separated, the magnetic field of the internal magnet sensed by the external switch will fall. (*See*, Jeutter, col. 4, ln. 63 – col. 5 ln. 13.) If the sensed magnetic field falls below a threshold, the switch will open thus terminating the transmission of power from the external unit to the internal unit. (*See*, Jeutter, col. 4, ln. 63 – col. 5 ln. 15.) Additionally, when the switch is opened a beeper is sounded to indicate that the internal and external units have become separated. (*See*, Jeutter, col. 5, ln. 15-20.)

8. As such, in the system of Jeutter, the magnetic field is generated from an internal magnet. Applicant therefore respectfully submits that Jeutter does not anticipate nor render obvious “wherein the magnetic field is generated at least in part by the external transceiver,” as recited by Applicant’s amended claim 1. Accordingly, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of claim 1 as anticipated by Jeutter for at least this reason.

9. Independent claim 16 recites, in part, “An apparatus ... comprising: means for measuring the strength of a magnetic field proximal to the external transceiver, wherein the magnetic field is generated at least in part by the external transceiver. Applicant, accordingly, respectfully

requests that the Examiner reconsider and withdraw the rejection of independent claim 16 as anticipated by Jeutter for at least similar reasons to those discussed above.

10. Claims 1-7, 11-22, 28-32 and 58 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,138,681 to Chen *et al.* (hereinafter, “Chen”). Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of these claims for at least the below stated reason.

11. Chen is directed to determining the alignment and position of an external device relative to an internal device. (*See*, Chen, Abstract.) To ensure optimal coupling between the external and internal devices, two permanent magnets are disposed at spaced-apart positions on the internal receiver. (*See*, Chen, Abstract.) The strength of the two internal permanent magnets is sensed by sensors in the external unit. (*See*, Chen, Abstract.) Chen further discloses a range control that may correlate the strength of the detected magnetic field to a distance separating the external and internal devices. (*See*, Chen, col. 6 lns. 3-15.)

12. As such, Chen, like Jeutter, discloses detecting a magnetic field generated by an internal magnet, and does not anticipate nor render obvious “wherein the magnetic field is generated at least in part by the external transceiver,” as recited by Applicant’s amended claim 1. Applicant accordingly respectfully requests that the Examiner reconsider and withdraw the rejection of claim 1 as anticipated by Chen for at least this reason.

13. Independent claim 16 recites, in part, “An apparatus … comprising: means for measuring the strength of a magnetic field proximal to the external transceiver, wherein the magnetic field is generated at least in part by the external transceiver. Applicant, accordingly, respectfully requests that the Examiner reconsider and withdraw the rejection of independent claim 16 as anticipated by Chen for at least similar reasons to those discussed above.

14. Independent claim 58 recites, in part, “[a]n apparatus … comprising: …means for indicating that the external transceiver has been displaced when the measured strength of magnetic field proximal to the external transceiver exceeds the threshold value...” Applicant respectfully requests that the Examiner reconsider and withdraw the rejections to independent claim 58 for at least the below stated reasons.

15. As noted above, in Chen the magnetic field is generated by internal magnets. As such, when the internal and external units are separated, the magnetic field sensed by the external unit will drop. In rejecting independent claim 58, the Examiner appears to rely on the above-noted range finder of Chen for allegedly disclosing a means for indicating the external transmitter is displaced. This range finder, however, merely discloses determining a distance between the internal and external devices, and does not provide an indication that the internal devices are displaced. Moreover, even if Chen did provide such an indication, such indication could only be provided in the system of Chen if the magnetic field fell below a threshold and not if it exceeded a threshold. Particularly, in order, for a measured distance to be above a particular distance, the measured magnetic field in the system of Chen must drop below a particular value corresponding to such distance. Thus, the system of Chen could not determine that the internal unit and external unit are displaced by determining that a threshold is exceeded, as the magnetic field would drop in the system of Chen as the two units became separated.

16. Accordingly, Applicant respectfully submits that neither Chen nor Jeutter, whether taken alone or in combination, anticipate nor render obvious “means for indicating that the external transceiver has been displaced when the measured strength of magnetic field proximal to the external transceiver exceeds the threshold value,” as recited in Applicant’s independent claim 58. Applicant therefore respectfully requests that the Examiner reconsider and withdraw the rejection of independent claim 58 for at least this reason.

### ***Dependent claims***

17. The dependent claims incorporate all the subject matter of their respective independent claims and add additional subject matter which makes them independently patentable over the art of record. Accordingly, Applicant respectfully asserts that the dependent claims are also allowable over the art of record.

### ***Priority Claim***

18. Applicant notes that the Examiner did not acknowledge the foreign priority under 35 U.S.C. §119. Applicant respectfully requests that the Examiner acknowledge the foreign priority in the next action.

***Conclusion***

19. In view of the foregoing, this application should be in condition for allowance. A notice to this effect is respectfully requested.
20. Applicant reserves the right to pursue any cancelled claims or other subject matter disclosed in this application in a continuation or divisional application. Any cancellations and amendments of above claims, therefore, are not to be construed as an admission regarding the patentability of any claims and Applicant reserves the right to pursue such claims in a continuation or divisional application.

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Respectfully submitted,

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